IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.17412 of 2005
SMT. SHAIL SINGH
Versus
STATE OF BIHAR & ANR.

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This application has been filed for quashing the order dated 2.8.2004 passed by Shri N.B. Lal, Judicial Magistrate, Ist Class, Patna in Complaint Case No. 858(C) of 2004 whereby and whereunder he has taken cognizance under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code against the accused persons including the petitioner and summoned them to face the trial.

Shortly stated the case of opposite party no. 2/complainant is that he is the Secretary of Rajiv Nagar Sahakari Griha Nirman Samiti Sahayog Ltd. (in short 'the Society') on the basis of election held on 18.8.1999 after the death of the then Secretary Rajendra Prasad on 7.2.1996.

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The then Secretary had purchased two kathas of land on 8.8.1984 from Ram Chandra and five others in the name of the Society appertaining to Tauzi no. 5291, khata no. 89, plot no. 72 in the village Sadikpur, Post Office- Dhanaut, Police Station-Danapur, District-Patna and since then the Society acquired right, title and possession over the land. The complainant wanted to get the land mutated in the name of the Society and an enquiry was made from the concerned office upon which the complainant came to know that the land in question has already been mutated in the name of the petitioner Shail Singh vide Mutation Case No. 674 and 675 of 2000-01 without any notice to the complainant on 17.7.2000. The complainant

thereafter filed Appeal No. 3 and 4 of 2001-02 against the said order of mutation before the D.C.L.R., Danapur against the petitioner. During the course of hearing of the appeal petitioner produced her sale deed and other papers to show that she purchased the land in question by two registered sale deeds dated 12.09.1986 from the Society. The complainant has stated that accused Anand Prakash Prabhakar had cordial relationship with the then Secretary Rajendra Prasad of the Society and he was well acquainted with the functioning of the Society. The complainant came to know that Shri Prabhakar had stolen receipts, sale deeds, registration pad etc. in absence of the then Secretary and the petitioner was admitted as a member of the Society after taking membership fees from her and subsequently a sale deed with respect to one khata land of plot no. 72 was executed on 12.9.1986 after impersonating the then Secretary Rajendra Prasad. The complainant thus alleged that the sale deed is forged and fabricated document. Shri Anand Prakash Prabhakar in connivance with the Secretary executed the aforesaid sale deed dated 12.9.1986 which is not binding on the Society. It appears that the complainant was examined on solemn affirmation and during enquiry under Section 202 Cr.P.C. two witnesses were examined. Some papers were filed on behalf of the complainant. The Magistrate after being satisfied that there was sufficient ground for proceeding against the accused persons including the petitioner under Sections 420, 423,467, 468, 471, 120(B), 379 and 34 of the Indian Penal Code issued summons against them for appearance. Against the said order the

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petitioner has preferred the present application for quashing before this Court.

It has been submitted on behalf of the petitioner that admittedly the land in question was purchased in the name of the Society through registered sale deed dated 8.8.1984 through two different sale deeds. The petitioner after purchasing the land got her name mutated by order dated 17.7.2000. It has further been argued that the petitioner is in possession of land in question. It has further been argued that the petitioner is a bonafide purchaser of the land and on the basis of allegations no criminal offence is made out against the petitioner. Learned counsel pointed out that the sale deed in question has been executed by the then Secretary Rajendra Prasad and on the basis of allegations it is a case purely of civil nature.

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Learned counsel for Opposite Party no.2, on the other hand, opposed the application and submitted that the sale deed in question is a forged and fabricated document. It was never executed by Rajendra Prasad. The same does not bear his signature. The petitioner was never made a member of the Society by the then Secretary. Learned counsel submitted that all the papers of the petitioner have been created by Shri Anand Prakash Prabhakar who is not even a member of the Society.

Thus as per the allegation Shri Anand Prakash Prabhakar was not a member of the Society. He had no right to receive the consideration amount from the petitioner. According to the complainant Shri Anand Prakash Prabhakar forged the signature of

the then Secretary Rajendra Prasad on the sale deed in question. In short the allegation is that the sale deed in question is a forged document created by Shri Anand Prakash Prabhakar to suit the petitioner.

A particular act may constitute both civil as well criminal wrong merely because a civil claim can also be filed would not be a ground to quash the proceeding.

The impugned order indicates that the learned Magistrate after finding sufficient material for proceeding further against the accused persons issued summons against them. The impugned order, therefore, indicates application of mind and judicial satisfaction of the learned Magistrate. This Court at this stage finds no error in the impugned order.

In the facts and circumstances of the case, this application is dismissed. However, the petitioner would be at liberty to raise all her points/grievance before the court below at the time of framing of charge.

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S.Sb/- **(Madhavendra Saran, J.)**